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116th Session, 2005-2006

**S. 83**

**STATUS INFORMATION**

General Bill

Sponsors: Senators McConnell, Moore, Campsen, Ryberg, O'Dell, Elliott, Alexander, Gregory, Leatherman and Richardson

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Introduced in the Senate on January 11, 2005

Currently residing in the Senate Committee on **Judiciary**

Summary: Tort Reform Act of 2005 Relating to Medical Malpractice

**HISTORY OF LEGISLATIVE ACTIONS**

<u>Date</u>	<u>Body</u>	<u>Action Description with journal page number</u>
12/15/2004	Senate	Prefiled
12/15/2004	Senate	Referred to Committee on <b>Judiciary</b>
1/11/2005	Senate	Introduced and read first time SJ-123
1/11/2005	Senate	Referred to Committee on <b>Judiciary</b> SJ-123

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**VERSIONS OF THIS BILL**

[12/15/2004](#)

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**A BILL**

11 TO ENACT THE “TORT REFORM ACT OF 2005 RELATING  
12 TO MEDICAL MALPRACTICE” BY AMENDING TITLE 15,  
13 CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING  
14 TO CIVIL REMEDIES AND PROCEDURES, BY ADDING  
15 ARTICLE 3, CHAPTER 32, SO AS TO ESTABLISH  
16 PROCEDURES GOVERNING THE AWARD OF  
17 NONECONOMIC DAMAGES; TO AMEND CHAPTER 35,  
18 TITLE 15, RELATING TO CIVIL REMEDIES AND  
19 PROCEDURES, BY ADDING SECTION 15-35-400, SO AS TO  
20 PROVIDE FOR OFFERS OF JUDGMENT AFTER  
21 COMMENCEMENT OF ANY CIVIL ACTION BASED ON  
22 CONTRACT OR SEEKING THE RECOVERY OF MONEY  
23 DAMAGES; TO AMEND CHAPTER 36, TITLE 15, RELATING  
24 TO CIVIL REMEDIES AND PROCEDURES, BY ADDING  
25 SECTION 15-36-100, SO AS TO ESTABLISH STANDARDS  
26 FOR EXPERT WITNESSES IN PROFESSIONAL  
27 MALPRACTICE ACTIONS; TO AMEND TITLE 15,  
28 RELATING TO CIVIL REMEDIES AND PROCEDURES, BY  
29 ADDING CHAPTER 79, SO AS TO PROVIDE FOR  
30 MANDATORY MEDIATION AND TO PERMIT BINDING  
31 ARBITRATION IN MEDICAL MALPRACTICE ACTIONS; TO  
32 AMEND ARTICLE 1, CHAPTER 79, TITLE 38, RELATING TO  
33 THE JOINT UNDERWRITING ASSOCIATION AND BOARD  
34 OF GOVERNORS FO THE PATIENTS’ COMPENSATION  
35 FUND, BY ADDING SECTION 38-79-40, SO AS TO PROHIBIT  
36 A PERSON SERVING IN THESE AGENCIES FROM BEING  
37 EMPLOYED OR COMPENSATED BY EITHER OF THESE  
38 AGENCIES; TO AMEND SECTION 38-79-460, RELATING TO  
39 THE PATIENTS’ COMPENSATION FUND, SO AS TO  
40 PROVIDE THAT THE FUND SHALL BE MANAGED BY THE  
41 BOARD OF GOVERNORS RATHER THAN THE STATE  
42 TREASURER; TO AMEND SECTION 38-79-470, RELATING

1 TO THE PATIENTS' COMPENSATION FUND, SO AS TO  
2 PROVIDE THAT MONEY SHALL BE WITHDRAWN FROM  
3 THE FUND UPON SIGNATURE OF THE CHAIRMAN OF THE  
4 BOARD OF GOVERNORS; AND TO AMEND SECTION  
5 40-47-211, RELATING TO THE BOARD OF MEDICAL  
6 EXAMINERS, SO AS TO ALTER THE MEMBERSHIP OF THE  
7 BOARD BY PROVIDING FOR LAY MEMBERS.

8  
9 Be it enacted by the General Assembly of the State of South  
10 Carolina:

11  
12 PART I

13  
14 GENERAL ASSEMBLY FINDINGS

15  
16 SECTION 1. The General Assembly finds that the sections  
17 presented in this act constitute one subject as required by Article  
18 III, Section 17 of the South Carolina Constitution, in particular  
19 finding that each change and each topic relates directly to or in  
20 conjunction with other sections to the subject of tort and other civil  
21 action reform as clearly enumerated in the title.

22 The General Assembly further finds that a common purpose or  
23 relationship exists among the sections, representing a potential  
24 plurality but not disunity of topics, notwithstanding that reasonable  
25 minds might differ in identifying more than one topic contained in  
26 the act.

27  
28 PART II

29  
30 DAMAGES

31  
32 SECTION 2. Title 15 of the 1976 Code is amended by adding:

33  
34 "CHAPTER 32

35  
36 Article 3

37  
38 Noneconomic Damage Awards

39  
40 Section 15-32-200. This article may be cited as the 'South  
41 Carolina Noneconomic Damage Awards Act of 2005.'

1 Section 15-32-210. As used in this article, unless the context  
2 clearly requires otherwise:

3 (1) 'Claimant' means the person suffering personal injury.

4 (2) 'Economic damages' means pecuniary damages arising  
5 from medical expenses and medical care, rehabilitation services,  
6 custodial care, loss of earnings and earning capacity, loss of  
7 income, burial costs, loss of use of property, costs of repair or  
8 replacement of property, costs of obtaining substitute domestic  
9 services, loss of employment, loss of business or employment  
10 opportunities, and other monetary losses.

11 (3) 'Medical malpractice' means doing that which the  
12 reasonably prudent health care provider would not do or not doing  
13 that which the reasonably prudent health care provider would do  
14 under the same or similar circumstances.

15 (4) 'Noneconomic damages' means nonpecuniary damages  
16 arising from pain, suffering, inconvenience, physical impairment,  
17 disfigurement, mental anguish, emotional distress, loss of society  
18 and companionship, loss of consortium, injury to reputation,  
19 humiliation, other nonpecuniary damages, and any other theory of  
20 damages including, but not limited to, fear of loss, illness, or  
21 injury.

22 (5) 'Personal injury' means injuries to the person including,  
23 but not limited to, bodily injuries, mental distress or suffering, loss  
24 of wages, loss of services, loss of consortium, and other  
25 noneconomic damages and actual economic damages.

26 (6) 'Personal injury action' means an action for personal  
27 injury, including a wrongful death action pursuant to Sections  
28 15-51-10 through 15-51-60 and a survival action pursuant to  
29 Section 15-5-90.

30

31 Section 15-32-220. (A) In a medical malpractice personal injury  
32 action, the prevailing plaintiff may be awarded compensation for:

33 (1) economic damages suffered by the claimant; and

34 (2) noneconomic damages suffered by the claimant not to  
35 exceed two hundred-fifty thousand dollars, except as provided in  
36 subsections (C) and (D).

37 (B) The provisions of subsection (A)(2) shall not be made  
38 known to the jury through any means, including voir dire, the  
39 introduction of evidence, argument of counsel, or instructions to  
40 the jury.

41 (C) The limitations for noneconomic damages suffered by the  
42 claimant do not apply if the jury or court determines that  
43 defendant's conduct was wilful, wanton, reckless or malicious.

1 (D) At the end of each calendar year, the State Budget and  
2 Control Board, Board of Economic Advisors, must determine the  
3 increase or decrease in the ratio of the Consumer Price Index to the  
4 index as of December 31 of the previous year, and the limitation  
5 on compensation for noneconomic damages pursuant to subsection  
6 (A)(2) must be increased or decreased accordingly. As soon as  
7 practicable after this adjustment is calculated, the Director of the  
8 State Budget and Control Board shall submit the revised limitation  
9 on compensation to The State Register for publication pursuant to  
10 Section 1-23-40(2), and the revised limitation becomes effective  
11 upon publication in The State Register. For purposes of this  
12 subsection, 'Consumer Price Index' means the Consumer Price  
13 Index for All Urban Consumers as published by the United States  
14 Department of Labor, Bureau of Labor Statistics.

15

16 Section 15-32-230. The provisions of this article do not affect  
17 any right, privilege, or provision of the South Carolina Tort Claims  
18 Act pursuant to Chapter 78, Title 15.”

19

### 20 PART III

21

### 22 PROCEDURAL PROVISIONS

23

24 SECTION 3. Chapter 35, Title 15 of the 1976 Code is amended  
25 by adding:

26

27 “Section 15-35-400. (A) Offer of Judgment. Except in  
28 domestic relations actions, after commencement of any civil action  
29 based upon contract or seeking the recovery of money damages,  
30 whether or not other relief is sought, any party may, at any time  
31 more than twenty days before the actual trial date, file with the  
32 clerk of the court a written offer of judgment signed by the offeror  
33 or his attorney, directed to the opposing party, offering to take  
34 judgment in the offeror’s favor, or as the case may be, to allow  
35 judgment to be taken against the offeror, for a sum stated therein,  
36 for property, or to the effect specified in the offer. The offeror  
37 shall give notice of the offer of judgment to the offeree’s attorney,  
38 or if the offeree is not represented by an attorney, to the offeree  
39 himself, in accordance with the service rules for motions and other  
40 pleadings set forth in the South Carolina Rules of Civil Procedure.  
41 Within twenty days after notification, or at least ten days prior to  
42 the trial date, whichever date is earlier, the offeree or his attorney  
43 may file with the clerk of the court a written acceptance of the

1 offer of judgment. Upon the filing, the clerk shall enter  
2 immediately judgment of the stipulation. If the offer of judgment  
3 is not accepted within twenty days after notification or prior to or  
4 on the tenth day before the actual trial date, whichever date occurs  
5 first, the offer shall be considered rejected and evidence thereof is  
6 not be admissible except in a proceeding after the trial to fix costs,  
7 interests, attorney's fees, and other recoverable monies. Any  
8 offeror may withdraw an offer of judgment prior to its acceptance  
9 or prior to the date on which it would be considered rejected by  
10 giving notice to the offeree or his attorney in accordance with the  
11 service rules for motions and other pleadings outlined in the South  
12 Carolina Rules of Civil Procedure. Any offeror may file a  
13 subsequent offer of judgment in any amount provided that the  
14 subsequent offer supercedes any earlier offer that was rejected by  
15 the offeree or withdrawn by the offeror, and, on filing, terminates  
16 any rights of interest or costs that may have been applicable to the  
17 superceded offer. Notwithstanding this provision, an offer is not  
18 considered rejected upon the making of a counteroffer by the  
19 offeree, but shall remain effective until accepted, rejected, or  
20 withdrawn as provided in this subsection. Any and all offers of  
21 judgment and any acceptance of offers of judgment must be  
22 included by the clerk in the record of the case.

23 (B) Consequences of Non-Acceptance. If an offer of judgment  
24 is not accepted and the offeror obtains a verdict or determination at  
25 least as favorable as the rejected offer, the offeror shall be allowed  
26 to recover from the offeree: (1) any administrative, filing, or other  
27 court costs from the date of the offer until judgment; (2) if the  
28 offeror is a plaintiff, eight percent interest computed on the amount  
29 of the verdict or award from the date of the offer; or (3) if the  
30 offeror is a defendant, a reduction from the judgment or award of  
31 eight percent interest computed on the amount of the verdict or  
32 award from the date of the offer.

33 (C) This section shall not be interpreted to abrogate the  
34 contractual rights of any party concerning the recovery of  
35 attorney's fees or other monies in accordance with the provisions  
36 of any written contract between the parties to the action.”

37

38 SECTION 4. Chapter 36, Title 15 of the 1976 Code is amended  
39 by adding:

40

41 “Section 15-36-100. (A) As used in this section, ‘expert  
42 witness’ means an expert who is qualified as to the acceptable  
43 conduct of the professional whose conduct is at issue and who:

1 (1) is licensed by an appropriate regulatory agency to  
2 practice his or her profession in the location in which the expert  
3 practices or teaches; and

4 (2)(a) is board certified by a national or international  
5 association or academy which administers written and oral  
6 examinations for certification in the area of practice or specialty  
7 about which the opinion on the standard of care is offered; or

8 (b) has actual professional knowledge and experience in  
9 the area of practice or specialty in which the opinion is to be given  
10 as the result of having been regularly engaged in:

11 (i) the active practice of the area of specialty of his or  
12 her profession for at least three of the last five years immediately  
13 preceding the opinion;

14 (ii) the teaching of the area of practice or specialty of  
15 his or her profession for at least half of his or her professional time  
16 as an employed member of the faculty of an educational institution  
17 which is accredited in the teaching of his or her profession for at  
18 least three of the last five years immediately preceding the opinion;  
19 or

20 (iii) any combination of the active practice or the  
21 teaching of his or her profession in a manner which meets the  
22 requirements of subitems (i) and (ii) for at least three of the last  
23 five years immediately preceding the opinion;

24 (3) is an individual not covered by subsections (A)(1) or (2),  
25 that has scientific, technical, or other specialized knowledge which  
26 may assist the trier of fact in understanding the evidence and  
27 determining a fact or issue in the case, by reason of the  
28 individual's study, experience, or both. However, an affidavit filed  
29 pursuant to subsection (B) by an expert qualified under this  
30 subsection must contain an explanation of the expert's credentials  
31 and why the expert is qualified to conduct the review required by  
32 subsection (B). The defendant is entitled to challenge the  
33 sufficiency of the expert's credentials pursuant to subsection (E).

34 (B) In an action for damages alleging professional negligence  
35 against a professional licensed by or registered with the State of  
36 South Carolina and listed in subsection (G) or against any licensed  
37 health care facility alleged to be liable based upon the action or  
38 inaction of a health care professional licensed by the State of South  
39 Carolina and listed in subsection (G), the plaintiff must file as part  
40 of the complaint an affidavit of an expert witness which must  
41 specify at least one negligent act or omission claimed to exist and  
42 the factual basis for each claim based on the available evidence at  
43 the time of the filing of the affidavit.

1 (C)(1) The contemporaneous filing requirement of subsection  
2 (B) does not apply to any case in which the period of limitation  
3 will expire, or there is a good faith basis to believe it will expire on  
4 a claim stated in the complaint, within ten days of the date of filing  
5 and, because of the time constraints, the plaintiff alleges that an  
6 affidavit of an expert could not be prepared. In such a case, the  
7 plaintiff has forty-five days after the filing of the complaint to  
8 supplement the pleadings with the affidavit. Upon motion, the trial  
9 court, after hearing and for good cause, may extend the time as the  
10 court determines justice requires. If an affidavit is not filed within  
11 the period specified in this subsection or as extended by the trial  
12 court and the defendant against whom an affidavit should have  
13 been filed alleges, by motion to dismiss filed contemporaneously  
14 with its initial responsive pleading that the plaintiff has failed to  
15 file the requisite affidavit, the complaint is subject to dismissal for  
16 failure to state a claim. The filing of a motion to dismiss pursuant  
17 to this section, shall alter the period for filing an answer to the  
18 complaint in accordance with Rule 12(a), S.C. Rules of Civil  
19 Procedure.

20 (2) The contemporaneous filing requirement of subsection  
21 (B) is not required to support a pleaded specification of negligence  
22 involving subject matter that lies within the ambit of common  
23 knowledge and experience, so that no special learning is needed to  
24 evaluate the conduct of the defendant.

25 (D) This section does not extend an applicable period of  
26 limitation, except that if the affidavit is filed within the period  
27 specified in this section, the filing of the affidavit after the  
28 expiration of the statute of limitations is considered timely and  
29 provides no basis for a statute of limitations defense.

30 (E) If a plaintiff files an affidavit which is allegedly defective,  
31 and the defendant to whom it pertains alleges, with specificity, by  
32 motion to dismiss filed contemporaneously with its initial  
33 responsive pleading, that the affidavit is defective, the plaintiff's  
34 complaint is subject to dismissal for failure to state a claim, except  
35 that the plaintiff may cure the alleged defect by amendment within  
36 thirty days of service of the motion alleging that the affidavit is  
37 defective. The trial court may, in the exercise of its discretion,  
38 extend the time for filing an amendment or response to the motion,  
39 or both, as the trial court determines justice requires. The filing of  
40 a motion to dismiss pursuant to this section shall alter the period  
41 for filing an answer to the complaint in accordance with Rule  
42 12(a), S.C. Rules of Civil Procedure.

1 (F) If a plaintiff fails to file an affidavit as required by this  
2 section, and the defendant raises the failure to file an affidavit by  
3 motion to dismiss filed contemporaneously with its initial  
4 responsive pleading, the complaint is not subject to renewal after  
5 the expiration of the applicable period of limitation unless a court  
6 determines that the plaintiff had the requisite affidavit within the  
7 time required pursuant to this section and the failure to file the  
8 affidavit is the result of a mistake. The filing of a motion to  
9 dismiss pursuant to this section shall alter the period for filing an  
10 answer to the complaint in accordance with Rule 12(a), S.C. Rules  
11 of Civil Procedure.

12 (G) This section applies to the following professions:

- 13 (1) architects;
- 14 (2) attorneys at law;
- 15 (3) certified public accountants;
- 16 (4) chiropractors;
- 17 (5) dentists;
- 18 (6) land surveyors;
- 19 (7) medical doctors;
- 20 (8) marriage and family therapists;
- 21 (9) nurses;
- 22 (10) occupational therapists;
- 23 (11) optometrists;
- 24 (12) osteopathic physicians;
- 25 (13) pharmacists;
- 26 (14) physical therapists;
- 27 (15) physicians' assistants;
- 28 (16) professional counselors;
- 29 (17) professional engineers;
- 30 (18) podiatrists;
- 31 (19) psychologists;
- 32 (20) radiological technicians;
- 33 (21) respiratory therapists; and
- 34 (22) veterinarians."

35

36 SECTION 5. Title 15 of the 1976 Code is amended by adding:

37

38

"CHAPTER 79

39

40 Section 15-79-1110. As used in this chapter:

- 41 (1) 'Health care provider' means a physician, surgeon,  
42 osteopath, nurse, oral surgeon, dentist, pharmacist, chiropractor,  
43 optometrist, podiatrist, hospital, nursing home, or any similar

1 category of licensed health care provider, including a health care  
2 practice, association, partnership, or other legal entity,  
3 (2) 'Medical malpractice' means doing that which the  
4 reasonably prudent health care provider would not do or not doing  
5 that which the reasonably prudent health care provider would do  
6 under the same or similar circumstances.

7  
8 Section 15-79-120. At any time before a medical malpractice  
9 action is brought to trial, the parties shall participate in mediation  
10 governed by procedures established in the South Carolina Circuit  
11 Court Alternative Dispute Resolution Rules in effect at the time for  
12 the State or any portion of the State. Parties may also agree to  
13 participate in binding arbitration.

14  
15 Section 15-79-130. If a judge finds that a health care provider in  
16 a medical malpractice action in this State may have engaged in any  
17 unjustifiable conduct in connection with testifying as an expert in  
18 deposition or at trial, the judge must report the expert to the state  
19 entity that licenses and regulates the profession of the expert or the  
20 type of health care entity represented by the expert.”

## 21 22 PART IV

### 23 24 JOINT UNDERWRITING ASSOCIATION

25  
26 SECTION 6. Article 1, Chapter 79, Title 38 of the 1976 Code is  
27 amended by adding:

28  
29 “Section 38-79-40. A person who serves on the Board of the  
30 Joint Underwriting Association or the Board of Governors of the  
31 Patients’ Compensation Fund is prohibited from being employed  
32 in any manner or compensated by the Joint Underwriting  
33 Association or the Patients’ Compensation Fund, and this  
34 prohibition continues for one year after the person ceases to be a  
35 member of the board.

36 No provision of this section may be construed to prohibit an  
37 insurance agent from selling insurance products to the  
38 association.”

39  
40 SECTION 7. Section 38-79-460 of the 1976 Code is amended to  
41 read:

1 “Section 38-79-460. The ~~Fund fund~~, and any income from it,  
2 must be held in trust, deposited in the office of the State Treasurer  
3 and kept in a segregated account entitled ‘Patients’ Compensation  
4 Fund’, invested and reinvested by the State Treasurer in the same  
5 manner as provided by law for the investment of other state funds  
6 in interest bearing investments and may not become a part of the  
7 general fund of the State. All expenses of collecting, protecting,  
8 and administering the Fund must be paid from the Fund managed  
9 by the board according to its plan of operation developed pursuant  
10 to Section 38-79-430.”

11  
12 SECTION 8. Section 38-79-470(1) of the 1976 Code is amended  
13 to read:

14  
15 “(1) Monies may be withdrawn from the ~~Fund fund~~ only upon  
16 the signature of the chairman of the Board of Governors or his  
17 designee ~~upon written warrants of the Comptroller General, drawn~~  
18 ~~on the State Treasurer to the payee designated in the requisition.”~~

19  
20 PART V

21  
22 MEDICAL DISCIPLINARY COMMISSION

23  
24 SECTION 9. Section 40-47-211 of the 1976 Code is amended to  
25 read:

26  
27 “Section 40-47-211. (A) There is created the Medical  
28 Disciplinary Commission of the State Board of Medical Examiners  
29 to be composed of ~~thirty-six~~ forty-two members. ~~The members of~~  
30 ~~the commission~~ Of these, thirty-six must be licensed physicians  
31 practicing their profession, ~~and five~~ Five physician  
32 commissioners must be elected from each of the six congressional  
33 districts, and six physician members of the commission must be  
34 elected at large from across the State. The board shall conduct the  
35 elections, and the elections for the physician members shall  
36 provide for participation by any physician currently licensed and  
37 actively practicing medicine in South Carolina and residing in the  
38 congressional district in which the election is held. At-large  
39 physician members must be currently licensed and actively  
40 practicing medicine in South Carolina and must reside within the  
41 State at the time of election and throughout their ~~term~~ terms. One  
42 physician commissioner initially elected from each district shall  
43 serve for a term of one year and until his successor is elected and

1 qualifies, one physician commissioner initially elected from each  
2 district shall serve for a term of two years and until his successor is  
3 elected and qualifies, and one physician commissioner initially  
4 elected from each district shall serve for a term of three years and  
5 until his successor is elected and qualifies. The successors of the  
6 initial physician commissioners shall serve for terms of three years  
7 or until their successors are elected and qualify. The members of  
8 the commission are limited to three terms. The members  
9 appointed to the board may not simultaneously serve as a  
10 commissioner. In case of any vacancy by way of death,  
11 resignation, or otherwise, the board shall appoint a successor to  
12 serve for the unexpired term. Where justice, fairness, or other  
13 circumstances so require, the board may appoint past  
14 commissioners to hear complaints in individual cases.

15 (B) Six members of the commission must be lay commissioners  
16 who each must have, at a minimum, a baccalaureate degree or the  
17 equivalent, and have no ascertainable ties to the health care  
18 industry. The lay commissioners must be appointed by the  
19 Governor from each of the six congressional districts, with the  
20 advice and consent of the Senate. Each lay commissioner must be  
21 a registered voter and reside in the congressional district he  
22 represents throughout his term. Each lay commissioner initially  
23 elected from each district shall serve for a term of three years and  
24 until his successor is elected and qualifies. The lay commissioners  
25 are limited to three consecutive terms.

26 (C) The commission is empowered to investigate and hear  
27 those complaints against physicians (medical and osteopathic) filed  
28 with the board pursuant to Section 40-47-200. The hearing must  
29 be conducted in accordance with Act 176 of 1977 (Administrative  
30 Procedures Act) and with regulations promulgated by the board  
31 and must be before a panel composed of at least three  
32 commissioners designated by the board, and one of those three  
33 commissioners must be a lay member. The panel is empowered to  
34 hear the matters complained of and to make findings of fact and  
35 recommendations as to disposition of those matters to the board.  
36 The panel shall make a certified report of the proceedings before it,  
37 including its findings of fact, conclusions, and recommendations,  
38 which must be filed together with a transcript of the testimony  
39 taken and exhibits as may have been in evidence before it with the  
40 administrator of the board, and a copy of the report must be  
41 delivered to the office of general counsel and the licensee or his  
42 counsel.”

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PART VI

DEPARTMENT OF INSURANCE AND GENERAL  
ASSEMBLY REVIEW OF INSURER'S REDUCTION OF  
PREMIUMS TO REFLECT SAVINGS

SECTION 10. (A) An insurer licensed to transact business in this State must report to the South Carolina Department of Insurance all savings directly related to a decrease in litigation and claims paid pursuant to litigation after the effective date of this act.

(B) The Department of Insurance shall review data reported on annual statements by liability insurers, including, but not limited to, paid claims, reserves, loss adjustment expenses, and such additional data as the department may require by promulgation of its Bulletins, to determine the amount of savings, if any, related to a decrease in litigation and decrease, if any, in claims paid pursuant to litigation after the effective date of this act. The department may require special reports from insurers to determine if savings are realized as a result of the provisions of this act. The department shall compile a report of savings realized as a result of the provisions of this act and submit it for General Assembly review upon request. Costs or expenses associated with the compilation of this report on savings shall be paid by the insurers pursuant to the provisions of Chapter 13 of Title 38.

The Department of Insurance shall review premium and losses by line of insurance to determine if appropriate adjustments have been made based upon department estimates of savings realized pursuant to the provisions of this act.

PART VII

MISCELLANEOUS

SECTION 11. The provisions of this act do not affect any right, privilege, or provision of the South Carolina Tort Claims Act as contained in Chapter 78, Title 15 of the 1976 Code of South Carolina or the South Carolina Solicitation of Charitable Funds Act as contained in Chapter 56 of Title 33.

SECTION 12. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or

1 liability incurred under the repealed or amended law, unless the  
2 repealed or amended provision shall so expressly provide. After  
3 the effective date of this act, all laws repealed or amended by this  
4 act must be taken and treated as remaining in full force and effect  
5 for the purpose of sustaining any pending or vested right, civil  
6 action, special proceeding, criminal prosecution, or appeal existing  
7 as of the effective date of this act, and for the enforcement of  
8 rights, duties, penalties, forfeitures, and liabilities as they stood  
9 under the repealed or amended laws.

10

11 SECTION 13. If any section, subsection, paragraph,  
12 subparagraph, sentence, clause, phrase, or word of this act is for  
13 any reason held to be unconstitutional or invalid, such holding  
14 shall not affect the constitutionality or validity of the remaining  
15 portions of this act, the General Assembly hereby declaring that it  
16 would have passed this act, and each and every section, subsection,  
17 paragraph, subparagraph, sentence, clause, phrase, and word  
18 thereof, irrespective of the fact that any one or more other sections,  
19 subsections, paragraphs, subparagraphs, sentences, clauses,  
20 phrases, or words hereof may be declared to be unconstitutional,  
21 invalid, or otherwise ineffective.

22

23 SECTION 14. Upon approval by the Governor, this act takes  
24 effect July 1, 2005, except that as of this act's effective date, the  
25 State Treasurer shall relinquish the management of funds in the  
26 Patient's Compensation Fund, created pursuant to Section  
27 38-79-420, to the Board of Governors of the fund, and premiums  
28 paid on or after this act's effective date must be deposited with the  
29 Board of Governors of the fund. The fund must be fully  
30 transferred to the Board of Governors, and the State Treasurer may  
31 not hold any deposits of the fund as of ninety days after this act's  
32 effective date.

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